

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S-32-SB-2014

Date of Decision: January 06, 2016

Kuldeep Singh

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. R.S. Mamli, Advocate
for the appellant.

Mr. R.S. Randhawa, Addl. AG, Punjab,
for the respondent.

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***1. Whether Reporters of local papers may be
allowed to see the judgment? Yes***

2. To be referred to the Reporters or not? Yes

***3. Whether the judgment should be reported in the
Digest? Yes***

NARESH KUMAR SANGHI, J.(Oral)

Challenge in this criminal appeal is to the judgment,
dated 25.11.2013, passed by learned Judge, Special Court, SAS

Nagar (Mohali), whereby the appellant, Kuldeep Singh, was held guilty for having committed the offence punishable under Section 29, read with Section 21(c) of Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter referred to as the NDPS Act), and ordered to undergo rigorous imprisonment for ten years, besides payment of fine of ₹1,00,000/- (Rupees One Lac only) and in default thereof, to undergo further rigorous imprisonment for six months, for abetting Mehtab Gul Bahar (co-accused of the appellant) to keep in possession 500 gm. *Smack* without any valid permit or licence.

Learned counsel for the appellant submits that even if the whole case of the prosecution is taken at its face value, then also it is clear that alleged *Smack*, weighing 500 gm. was recovered from Mehtab Gul Bahar (the co-accused of the appellant); there is not an iota of word on the file that appellant was in conscious possession of the said contraband allegedly recovered from his co-accused; even the prosecution has failed to substantiate the fact that the appellant had the knowledge that his co-accused was carrying the contraband and that the appellant in any manner abetted his co-accused to commit the offence or that he hatched conspiracy with his co-accused to

commit the offence. He further submits that perusal of the statement under Section 313, Cr.P.C., would reveal that no question with regard to conscious possession of the alleged contraband and abetment of the offence by co-accused of the appellant was put to the appellant. In support of his contention, learned counsel has placed reliance on **Raj Kumar v. State of Punjab, 2005 (1) RCR (Criminal) 70**, a Division Bench judgment of this Court; **Avtar Singh v. State of Punjab, 2002 (4) RCR (Criminal) 180 (SC)** and **Ram Sarup and others v. State of Haryana, 2014(2) RCR (Criminal) 157**, a Single Bench judgment of this Court.

On the other hand, learned counsel for the State though fairly conceded that *Smack* was not recovered from the appellant, yet he submitted that the learned Trial Court has given the cogent reasons for holding the appellant guilty for the offence punishable under Section 29, read with Section 21(c) of NDPS Act, and, as such, no interference is called for. He further submits that Section 35 of NDPS Act will enable the Court to presume the culpability of the appellant for hatching conspiracy with his co-accused, Mehtab Gul Bahar.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

The case of the prosecution is that on 07.12.2008, Sub Inspector Tarlochan Singh (PW-1) along with Sub Inspector Santokh Singh (PW-2) and other police officials were present within the Revenue Estate of SAS Nagar (Mohali), for the purpose of crime detection. The aforesaid police party noticed that appellant and his co-accused, Mehtab Gul Bahar (later declared to be juvenile and the case was entrusted to the Principal Magistrate, Juvenile Board, SAS Nagar) were coming from Chandigarh side. On suspicion, both of them were intercepted. A bag containing 500 gm. *Smack* was recovered from Mehtab Gul Bahar. After calling the Gazetted officer at the spot, effecting the recovery of *Smack* after personal search of the accused persons, drawing the sample, etc., the appellant and his co-accused were arrested and taken to the police station for producing them before the Inspector Navneet Kumar, Station House Officer (PW-6). The facts of the case were verified by Inspector Navneet Kumar (PW-6) and the appellant was put behind the bars. On 08.12.2008, the appellant and his co-accused along with the

contraband were produced before the Area Judicial Magistrate. The sample was sent to the Chemical Examiner for analysis, through Head Constable Anil Kumar (PW-4). During the investigation, it was revealed that Mehtab Gul Bahar, was a minor and, as such, his case was separated from the case of the appellant. The charge-sheet for prosecution of the appellant for the offence punishable under Section 21 of NDPS Act was presented before the Court below.

After completing the formalities of Section 207, Cr.P.C., and finding a prima facie case, initially the charge under Section 21 of NDPS Act was framed on 08.12.2009, against the appellant to which he pleaded not guilty and claimed trial. After recording the depositions of as many as seven prosecution witnesses, it was realised that proper charge was not framed for prosecution of the appellant and, as such, vide order, dated 03.05.2013, the charge was amended and the appellant was charge-sheeted for having committed the offences punishable under Sections 21 and 29 of NDPS Act. Since the public prosecutor proposed not to lead any further evidence and the defence counsel also consented not to further cross-examine the prosecution witnesses already examined, therefore, the learned

Trial Court heard the arguments and held the appellant guilty for having committed the offence punishable under Section 29, read with Section 21(c) of NDPS Act, and ordered him to undergo rigorous imprisonment for ten years, besides payment of fine of ₹ 1,00,000/- (Rupees One Lac only) and in default thereof, to further undergo rigorous imprisonment for six months.

In the matter of **Raj Kumar v. State of Punjab, 2005 (1) RCR (Criminal) 70**, Hon'ble Division Bench of this Court found that two accused, who were travelling in a jeep, and a bag containing 8 kg. of *Opium* was lying in between them on the seat of the jeep, was not sufficient to presume the conscious possession of the contraband and, as such, the judgment of conviction and sentence was set aside and they were acquitted of the charge levelled against them. Hon'ble Division Bench also observed that during examination of the accused under Section 313, Cr.P.C., no question was asked that they were in conscious possession of the contraband and, as such, the presumption enshrined in Section 35 or 54 of NDPS Act, could not be attracted against them. Similar was the proposition in Ram Sarup's case (*supra*).

With the assistance of learned counsel for the parties, the depositions of Sub Inspector Tarlochan Singh (PW-1), who is the Investigating Officer of the case; Sub Inspector Santokh Singh (PW-2), who witnessed the recovery and signed the recovery memo, etc.; Head Constable Rajkumar (PW-3), who clicked the photographs on 08.12.2008, while drawing the sample in the presence of the Magistrate; Head Constable Anil Kumar (PW-4), who allegedly carried the sample to the Chemical Examiner; Head Constable Raman Kumar (PW-5), who had retained the contraband and the sample in his possession being Moharir Head Constable; Inspector Navneet Kumar (PW-6), the Station House Officer, before whom the appellant and his co-accused along with contraband were produced; and Superintendent of Police, Swarandeep Singh (PW-7), in whose presence the contraband was recovered from the co-accused of the appellant, have been perused. In their depositions, it has neither emerged that how the appellant was connected with his co-accused nor it has come that the appellant had knowledge that his co-accused was carrying *Smack* in a bag. In fact, it is the positive case of the prosecution that the contraband was recovered from Mehtab Gul Bahar (co-accused of the appellant). The perusal of the material available on record shows that there is not an iota of word on the file that

appellant abetted his co-accused to commit the present offence or conspired with him for that purpose.

In Rajpal Singh @ Raju v. State of Punjab, 2014 (1)

RCR (Criminal) 40, this Court while dealing with the recovery of contraband from the accused held that:

i) Unless and until, it is proved beyond the shadow of doubt that the recovery of the contraband was in fact effected from the conscious possession of the person arrayed as an accused- The Court should not sway with the allegation of the prosecution that particular contraband was allegedly recovered from the accused and as such he has to be convicted and sentenced.

ii) The evidence led by the prosecution in support of its allegation must be of high quality.

iii) Where a statute confers drastic powers, seeks to deprive a citizen of his liberty and prescribes for undergoing stringent punishment, scrupulous compliance of the statutory provisions must be insisted upon.

In view of the totality of the facts and circumstances of the case and the ratio of the judgments referred to hereinabove, this Court is of the considered opinion that the prosecution has miserably failed to connect the appellant with the 500 gm. *Smack* alleged to have been recovered from his co-accused. This Court also finds that there is not an iota of word on the file to say that appellant either abetted his co-accused to commit the offence or conspired with him to commit the same and, as such, the judgment of conviction and sentence, dated 25.11.2013, passed by the learned Trial Court is set aside and the appellant is acquitted of the charges levelled against him.

Since the appellant is in custody, therefore, he be set at liberty at once, if not required in any other case.

Disposed of accordingly.

January 06, 2016
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(NARESH KUMAR SANGHI)
JUDGE